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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FOURTH AGE LTD., *et al*,

Plaintiffs,

v.

WARNER BROS. DIGITAL
DISTRIBUTION, *et al*,

Defendants.

Case No. 12-9912-ABC (SHx)

DISCOVERY MATTER

**WARNER AND ZAENTZ'S
OBJECTION TO PLAINTIFFS'
RESPONSE TO WARNER AND
ZAENTZ'S JOINT SUBMISSION
PURSUANT TO JULY 22, 2014
ORDER**

Judge: Hon. Audrey B. Collins
Magistrate: Hon. Stephen J. Hillman

Discovery Cut-Off: July 29, 2014

WARNER BROS. DIGITAL
DISTRIBUTION INC., *et al*,

Counterclaim
Plaintiffs,

v.

FOURTH AGE LTD., *et al*,

Counterclaim
Defendants.

1 The Court's July 22, 2014 Order is clear. The Court ruled that Warner and
 2 Zaentz "may each select and advise the court of [75 total] logged documents which
 3 they wish the court to review in camera." Dkt 180. This Order was not issued *sua*
 4 *sponte*, but in response to Issues 3, 4, and 5 of Warner and Zaentz's motion, which
 5 extensively detailed our position challenging the Tolkien/HC Parties' assertions of
 6 attorney-client, common interest, and work-product privileges. In light of this
 7 showing, *in camera* review was plainly warranted. *See* Dkt 242-1 at 18-21, 29-31,
 8 38-39; Dkt 264; *In re Grand Jury Investigation*, 974 F.2d 1068, 1074-75 (9th Cir.
 9 1992) ("minimal threshold" met where party can show "factual basis sufficient to
 10 support a reasonable, good faith belief that *in camera* inspection may reveal
 11 evidence that information in the materials is not privileged"). Not only is the Court
 12 free to order whatever relief it finds appropriate, Warner and Zaentz specifically
 13 suggested *in camera* review of a sampling of documents as an alternative and
 14 intermediate step to resolving the motion. *See* Dkt. 264 at 5.

15 The Tolkien/HC Parties' Response is an improper motion for
 16 reconsideration. They do not, and cannot, point to any new or different facts or law
 17 justifying such a motion. *See* L.R. 7-18. Issues 3-5 of the Joint Stipulation concern
 18 the assertions of privilege by the Tolkien/HC Parties, and whether they should be
 19 required to produce documents withheld as a result of those positions. The fact that
 20 the Court took the lesser step of ordering submission to the Court for *in camera*
 21 review (in lieu of production to all parties) is not a new development. To the extent
 22 the Tolkien/HC Parties disagreed, they had the option instead to file objections with
 23 the District Judge, which they chose not to do. *See* Fed. R. Civ. Proc. 72(a).

24 Similarly, the Tolkien/HC Parties' alternative request "that they be granted
 25 the same relief" is not only untimely, but wholly unwarranted. They never met and
 26 conferred, much less requested the relief they now seek. For good reason, the
 27 Tolkien/HC Parties never moved to challenge the Warner and Zaentz Parties'

1 privilege logs or assertions of privilege, despite having received Warner's and
2 Zaentz's privilege logs nearly three months ago. Their time for doing so has now
3 passed. The Tolkien/HC Parties also provide no evidentiary support for their
4 requested relief. The Tolkien/HC Parties' Response makes clear that their belated
5 request for *in camera* review must be denied. See Dkt 288 at 3:1 ("Bare allegations
6 alone will not satisfy the *Zolin* standard.").

7
8 Dated: August 7, 2014

Respectfully Submitted,

O'MELVENY & MYERS LLP

11 By: /s/ Daniel M. Petrocelli
12 Daniel M. Petrocelli
13 Attorneys for Warner Defendants
14 and Counterclaim Plaintiffs

15 Dated: August 7, 2014

ARNOLD & PORTER LLP

17 By: /s/ Martin R. Glick
18 Martin R. Glick
19 Attorneys for Zaentz Defendants and
20 Counterclaim Plaintiffs

1 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer attests that all other
2 signatories listed, and on whose behalf the filing is submitted, concur in the filing's
3 content and have authorized the filing.

4
5 Dated: August 7, 2014

Respectfully Submitted,

6 O'MELVENY & MYERS LLP

7
8 By: /s/ Daniel M. Petrocelli
9 Daniel M. Petrocelli
10 Attorneys for Warner Defendants
11 and Counterclaim Plaintiffs
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